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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

ORIGINAL
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)

Revision of Part 22 of the)
Commission's Rules Governing)
the Public Mobile Services)

CC Docket No. 92-115

To: The Commission

**COMMENTS IN RESPONSE TO
NOTICE OF PROPOSED RULEMAKING**

Carl W. Northrop
Bryan Cave
Suite 700
700 Thirteenth St., N.W.
Washington, D.C. 20005
(202) 508-6000

Counsel to the
Commenting Parties

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SUMMARY

These Comments, which are filed by a broad-based coalition of Part 22 licensees, are divided into four major parts. Section II addresses those proposed rules which the Commenters strongly support as furthering the Commission's goals of allowing carriers greater flexibility and promoting the public interest. Section III discusses those proposed rule changes which, the Commenters believe, would have unintended deleterious effects and should therefore be reconsidered or revised. The comments suggest methods of correcting the problems that have been identified. In Section IV, the Commenters propose additional necessary and important changes to Part 22 which they believe should be added to this Docket. Finally, Section V contains extensive section-by-section editorial comments on many of the proposed rule changes.

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PacTel Paging, Arch Communications Group, AACCS
Communications, Inc., Answer, Inc., C&W Communications, Cal-
Autofone, Communications Enterprises, Desert Mobilfone,
Electronic Engineering Company, Flagler Communications, Hello
Pager Company, Jackson Mobilphone, Kelley's Telecommunications,
LaVergne's Telephone Answering Service, Lowrance Sound &
Communications, Midco Communications, Nunn's Communications
Services, Inc., Radio Electronic Products Corp., Relay
Communications Corporation, Wilcom Corporation and Woodward
Communications (collectively, the "Commenters") hereby submit
their collective comments on the Notice of Proposed Rulemaking,
FCC 92-205, released June 12, 1992 (the "Notice") in which the
Commission proposes to revise Part 22 of its rules governing the
Public Mobile Services. The following is respectfully shown:

I. INTRODUCTION

1. The Commenters are all licensed to provide radio common carrier services under existing Part 22 of the Commission's rules. The Commenters represent a broad cross-section of industry members. They include: (a) large, medium and small market operators; (b) family-owned and publicly-traded companies; (c) individuals, partnerships, and corporations; (d) national, regional and local operators; (e) companies affiliated with and unaffiliated with wireline telephone companies; (f) new entrants to the business and companies now owned by a second generation of operators from the same family; (g) paging-only companies, paging and mobile telephone companies, and paging, mobile telephone and cellular companies; and, (h) companies providing only common carrier services, and those which also provide private carrier land mobile services. In some instances, the Commenters actively participated in the last rewrite of Part 22 nearly a decade ago^{1/}, and have operated under the existing rules since that time. In sum, the Commenters have a substantial basis in experience for informed comment in this proceeding.

^{1/} See Revision and Update of Part 22 of the Commission's Rules (CC Docket No. 80-57), 95 FCC 2d 769 (1983).

**II. THE COMMENTERS SUPPORT
MANY OF THE MAJOR INITIATIVES
REFLECTED IN THE PROPOSED RULES**

2. There is a tendency in commenting on extensive notices of proposed rulemaking to focus most of the attention upon those aspects of proposed rules with which the commenting party disagrees. In this instance, the Commenters wish to avoid this tendency and emphasize their strong support for many of the major initiatives set forth in the Notice. The Commission has properly recognized that significant changes have occurred in the Public Mobile Services that make some of the existing rules obsolete, burdensome and unnecessary. Changes in the competitive structure of the industry, and in technology, require rule revisions that provide carriers with greater flexibility to deal promptly with new circumstances while, at the same time, promoting the public interest. In this regard, the Commenters heartily endorse the following aspects of the Commission's proposal:

**A. Elimination of Notification Requirements
for Minor Changes and Additional Transmitters
within Contours of Authorized Stations.**

3. The Commission is proposing to modify its rules to allow licensees to make minor changes to facilities and to construct and operate additional transmitters within the contours of authorized stations without seeking prior Commission approval or notifying the Commission of such changes. The Commenters

strongly believe that these proposed changes, with some minor adjustments which are discussed in greater detail below^{2/}, will improve service to the public and foster healthy competition without causing any adverse administrative, regulatory or public interest consequences. These are, therefore, worthy changes which deserve to be implemented as soon as possible.

4. In the aggregate, the Commenters have extensive experience in the preparation, filing, prosecution and implementation of radio common carrier facility changes. This experience indicates that the overwhelming majority of filings are of a minor nature. Although these filings can be processed on a relatively routine basis by the Commission, the simple fact is that the carriers are subjected to unnecessary expenses and delays by having to make filings at the Commission with respect to all such minor system adjustments. Worst of all, there appears to be no significant regulatory benefit from these filings.

5. The Commission's Mobile Services Division is over worked and under staffed. Priority is necessarily given to the processing of new facility applications, applications for newly available frequencies and major change proposals. Consequently, notifications of minor and permissive changes in existing facilities frequently languish at the Commission and often are never reflected in issued authorizations. Yet, the radio common

^{2/} See discussion infra at Sections III and IV.

carrier business has continued to grow and prosper, and instances of harmful interference do not appear to be on the rise. This indicates that the proposed reduction in filing requirements for minor proposals can be implemented without adverse consequences.

6. Two important competitive concerns support this proposed streamlining of application procedures. First, the allocation of new radio common carrier spectrum and the diminishment of state barriers to entry have led to an increasingly competitive radio common carrier industry. This competition is inhibited, however, when a carrier's ability to respond to changing needs in the marketplace is slowed by regulatory hurdles that must be cleared before system changes can be implemented. The Commenters believe that the proposed streamlining of regulations governing minor system changes will enhance competition by permitting carriers to adjust their systems and services promptly to meet evolving marketplace demands.

7. The Commenters also believe that there are adequate safeguards in place that will prevent the proposed relaxation of filing requirements from having adverse consequences in terms of inter-system interference. The Commission has recently toughened its stance on the issuance of fines and forfeitures for rule violations.^{3/} The fines to which

^{3/} Standards for Assessing Forfeitures, 6 FCC Rcd 4695 (1991). The Mobile Services Division has been using its forfeiture authority consistently when rule violations are discovered. See, (continued...)

common carriers are subject are particularly severe in instances involving unauthorized operations.^{4/}. The Commenters believe that this fact will cause carriers to remain mindful of the limits upon their ability to implement system changes without authority of or notification to the Commission, thereby avoiding problems which might otherwise be associated with the proposed relaxation of filing requirements.

B. Replacement of the Carey Method

8. The Commission is proposing to discontinue its reliance on the methods outlined in the Carey Report for evaluating proposed stations in the public land mobile and rural radio services. In place of these methods, the Commission is proposing to use six relatively simple formulas to define the service areas and interference potential of all VHF and 450 MHz UHF stations in these services.

9. Although the Carey Report has served the radio common carrier industry well, the Commenters support the proposed change. Several of the Commenters have been involved in disputes

^{3/}(...continued)

e.g., SEG Cellular Limited Partnership, FCC 92-408, released Sept. 9, 1992; Joyce Communications, Inc., 6 FCC Rcd 5338 (Mob. Serv. Div. 1991); Mobilecomm of New Mexico, Inc., 6 FCC Rcd 861 (Mob. Serv. Div. 1991).

^{4/} The standard fine schedule for common carriers provides a base fine of \$80,000 for unauthorized operation, which would appear to be the operative offense if a party implemented a system change without notice that did not properly qualify as minor.

at the Commission arising out of different interpretations over the proper calculation of Carey contours in circumstances where interpolation was required. Disputes of this nature are a waste of everybody's time. If the Commission can come up with formulas which reasonably approximate the results under the Carey formula^{5/} but without the ambiguities, the Commenters believe both the industry and the Commission will be benefitted.

10. The Commenters also believe that the proposed rule changes regarding the calculation of interference potential will facilitate the preparation and filing of applications. More and more of the Commenters are preparing their own applications using in-house technical personnel in order to reduce costs and streamline the application preparation process. This beneficial trend will be encouraged by the adoption of formulas which are compact, easy to program, and will facilitate the efforts of carriers to prepare their own engineering proposals.

^{5/} The Commenters understand that some radio common carrier engineering firms, including Comp Comm, Inc., do not believe that the proposed formulas reasonably approximate the Carey contours in situations involving high powered sites at elevated sites. The Commenters' support for the proposed change is based upon the presumption that the formulas as finally adopted will offer a close approximation to the Carey report. The Commission is urged to pay close attention to the analyses of Comp Comm and others to assure that the relationship of the formulas to the Carey Report is maintained. Otherwise, the change will substantively affect carrier rights.

C. Elimination of Traffic Loading Studies

11. The Commission is proposing to eliminate the requirement that traffic loading studies be submitted in support of applications for one or more additional channels for an existing two-way station. The Commenters agree that two-way traffic loading studies have outlived their usefulness. There is some confusion in the industry as to when studies are required, so the practices which are followed by different carriers are uneven.^{6/} Conducting these studies is burdensome for carriers and evaluating the studies is time consuming for the Commission staff. Also, the information contained in traffic loading studies is difficult to confirm or verify, which makes the usefulness and reliability of the information suspect.^{7/}

12. The Commission has properly noted that changes in the telecommunications industry have reduced the necessity for continuing to utilize traffic loading studies. First, the increased competition to traditional mobile telephone services offered by Specialized Mobile Radio ("SMR") systems and cellular

^{6/} Since traffic loading studies have been eliminated for paging channels, there are some carriers who do not tender such studies in support of an application for a two channel that is going to be dedicated to one-way use. Also, there is some confusion over the need for a traffic loading study when a carrier is adding one of its presently licensed two-way frequencies at a remote site where other two-way channels are located. The result is a wide variety of practices in the submission of studies.

^{7/} Because traffic can vary at different times of the month and year, it is very difficult for the Commission or a competitor to verify the accuracy of an historical report of loading.

systems has reduced the inherent spectrum value of traditional two-way channels and thereby reduced the competitive incentives to warehouse frequencies. Second, the advent of cellular -- which provides a very high grade of service to mobile subscribers -- makes the old loading criteria for conventional channels obsolete. The blocking criteria that had to be met in order to qualify for additional two-way channels under the Commission's rules are simply too high to permit a provider of such services to offer a service competitive with newly available cellular services.^{8/}

13. The elimination of two-way traffic studies also cures an anomaly in the previous rules. As more and more mobile subscribers have migrated to cellular systems, and as the restrictions on the use of two-way channels for paging services were relaxed, an increasing number of two-way channels became dedicated to paging uses.^{9/} This has created an odd situation in which a carrier seeking to expand a paging service on a "two-way" channel might be subject to traffic loading study requirements, while a carrier operating strictly on a dedicated paging channel

^{8/} Cellular systems typically are engineered to provide a .01 or .02 blocking rate. In stark contrast, an applicant for an additional traditional two-way channel must show blocking of .25! See FCC Rules, Section 22.16(a)(1).

^{9/} The Notice recognizes the fact that two-way channels are increasingly being devoted to one-way uses. Notice, at p.14.

would face no such requirements.^{10/} These carriers can compete on a more equal footing once the Commission eliminates the traffic loading study requirements for two-way channels as it did before for one-way services.

14. Thus, on balance, the Commenters strongly endorse the Commission's proposal to eliminate traffic loading studies for two-way stations.

D. Automatic Termination of Authorizations

15. The Commission is proposing rules making it clear that authorizations automatically expire without further action by the Commission if and when the construction deadline or renewal period come and go without appropriate filings by the previously authorized carrier. The Commenters are of the view that the existing rules should have been interpreted and applied by the Commission to effect the automatic termination of expired

^{10/} A similar anomaly will exist under the proposed rules. A carrier providing paging services over two-way channels can prosecute two co-pending applications while an operator on paging-only channels can only prosecute a single application. Either the same number of number of co-pending applications should be allowed for one-way and two-way frequencies, or applicants seeking multiple two-way channels should be limited to providing two-way service.

authorizations^{11/} and thus strongly support the proposed clarifications.

16. The Mobile Services Division has been in the midst of a laudatory program to clean up its database by formally terminating authorizations for which it can find no evidence of covering license applications or renewals having been filed. See, e.g., Common Carrier Public Mobile Services Information, Proposed Deletion of Expired PLM Authorizations, FCC Public Notice, Mimeo No. 30013, October 2, 1992. Nevertheless, a review of the list of recent terminations clearly indicates that it takes the Commission a long period of time to discover and take action regarding previously authorized facilities that do not appear to be in operation.^{12/} During this period, frequencies are lying fallow and unavailable to new applicants wishing to initiate beneficial public services.

17. The automatic termination of authorizations has the incidental benefit of reducing the Commission's paperwork.

^{11/} There is language in both Sections 22.43 and 22.44 of the rules indicating that uncovered or unrenewed authorizations expire "automatically". Nevertheless, the Commission has interpreted certain case law to require formal action by the Commission to terminate an authorization before it is available for application by another. This interpretation has been a source of considerable litigation. See, e.g., PacTel Paging of California, 7 FCC Rcd 865 (Mob. Serv. Div. 1992).

^{12/} The latest list includes authorizations which were due to expire in 1988. However, under the current procedure the frequencies in these authorizations are not available to others pending formal action by the Commission to terminate. Thus, fallow spectrum has been removed from the applicant pool for an extensive period of time.

By making the expiration periods self-executing, the Commission can streamline the licensing process and reduce the number of instances in which regulatory intervention is required.

18. Notably, changes in Part 21 of the Commission's rules governing the point-to-point microwave radio services were made in 1986 to provide for the automatic expiration of authorizations which were not timely covered by covering license applications. Revision and Update of Part 21, 104 FCC 2d 116 (1986). In the experience of the Commenters, these Part 21 changes have expedited the licensing process without creating any administrative problems.

E. Amnesty Period

19. The Commission has announced a limited amnesty period during which licensees who turn in authorizations for unused channels will not be subject to forfeitures for discontinuing service without notifying the Commission. The Commenters support the proposal, and urge the Commission to expand the category of "offenses" to which amnesty will apply.

20. As the Commission seeks to streamline its application processes, it must take steps to improve the integrity of the Commission's licensing database. The concept of relying upon self-certification to a greater extent can only succeed if carriers are able to properly discern the nature and extent of existing facilities that are entitled to protection. Any steps the Commission can take to encourage licensees to

conform their authorizations to their actual, real-world operations will promote this worthy objective. Hopefully, the limited amnesty period announced by the Commission will have the beneficial effect of encouraging licensees to return for cancellation licensed but unused channels.^{13/}

21. The amnesty concept also deserves support because of the relatively dramatic and somewhat unexpected changes^{14/} the Commission has made in its forfeiture procedures. As earlier noted, the Commission is implementing increasingly severe fines on a regular basis as part of a new effort to add certainty and consistency to the forfeiture process. See note 3 infra. While these changes have a worthy impact in deterring future rule violations, they may have the incidental unintended consequence of discouraging carriers from reporting and correcting pre-existing rule violations. The simple fact is that the radio common carrier businesses are, generally, low margin businesses which often cannot sustain the imposition of large forfeitures.

^{13/} While the Commenters are hopeful about the results of the amnesty, the likely effects should not be overstated. Under the existing rules, a carrier may submit an authorization for cancellation without providing an explanation for the action. In the absence of allegations by third parties regarding facilities alleged not to be in operation, the Commenters know of no instance in which the Commission, on its own motion, has inquired regarding the reasons for cancelling a previously authorized station. Thus, the practical benefit of the amnesty period as proposed is somewhat limited.

^{14/} The Commission's changes in the forfeiture rules were considered procedural in nature, and were not preceded by an extended period of notice and comment. Thus, they were not expected by many licensees.

The unfortunate result may be a continuation of inaccuracies in the Commission's database if carriers are disinclined to notify the Commission of variances between their authorizations and actual operations. The proposed change will overcome this problem during the brief amnesty period.

22. In fact, the Commenters believe the amnesty proposal does not go far enough. The amnesty should be extended to permit carriers to identify other variances between their existing operations and their authorizations (e.g. minor relocations, equipment changes, antenna height changes, etc.) and to prosecute modification applications to conform the licenses to the existing facilities.^{15/} By expanding the amnesty proposal in this fashion, the Commission would further encourage carriers to take steps that would cause the Commission's database to be improved and rendered more accurate. Once again, without an amnesty proposal, carriers might be reluctant to point out discrepancies of this nature due to the risks of a significant forfeiture which, in many cases, a carrier can ill-afford.

23. The Commenters recognize that the Commission would want to limit the period of time in which carriers could take advantage of an amnesty period of this nature. A brief window (e.g. 90 to 180 days) would appear to be sufficient for carriers to prepare and file any necessary applications in order to

^{15/} Obviously, a carrier would not be able to secure a modified authorization conforming to the existing facilities if all applicable co-channel protection criteria were not met.

eliminate variances between their actual operations and their facilities of record.

F. Finder's Preferences

24. The Commission proposes to implement a finder's preference concept which is intended to give licensing priority to applicants who correctly identify to the Commission frequencies that are assigned but unused. The Commenters support this concept.

25. Carriers who identify unused channels for the Commission deserve to be rewarded for their efforts with a licensing priority. The simple fact is that the Commission does not have the resources or field personnel to fully monitor carrier operations. It makes perfect sense for the Commission to adopt rules that will encourage prospective applicants to help identify situations to the Commission, of which it would otherwise be unaware, in which frequencies are assigned but unused. Notably, this concept has been considered and adopted in the private land mobile services^{16/}, and common carriers deserve to enjoy similar rewards for identifying unused spectrum.

26. In some respects, however, the Commenters believe the proposed finder's preference concept must be refined. The earlier discussed rule changes which call for the automatic

^{16/} See Amendment of Parts 1 and 90 Concerning the Construction, Licensing and Operation of Private Land Mobile Radio Stations, 6 FCC Rcd. 7297 (1991).

termination of authorizations for unbuilt or unrenewed facilities already create an opportunity for applicants to file for channels which may still appear in the Commission's database. In the Commenters' view, preferences should not be awarded to applicants who merely show that an authorization has expired without construction or notification to the Commission. Rather, the finder's preference should be limited to circumstances where a party has filed a construction completion notice or renewal application for a facility which is not in fact in service.

27. By refining the finder's preference concept in this fashion, the Commission will be rewarding persons who bring information to the Commission's attention that is not otherwise discoverable from the Commission's files. This will limit the preference to those making meaningful contributions.

G. Alteration of Air-Ground Rules

28. The Commission proposes to establish technical assignment criteria for the channels used to provide 450 MHz air-ground service which would effectively replace the current air-ground allotment table.

29. The proposed changes reflect a substantial improvement over the current allocation system. The use of a table of allotments is an anomaly in the radio common carrier services. The result is a general unfamiliarity over the manner in which allocations are made and the procedures which apply.

These uncertainties often lead to confusion and litigation which otherwise would prove unnecessary.^{17/}

30. More importantly, the fixed table of allotments does not appear to have the flexibility necessary to meet current air-ground requirements. The procedures for reassigning channels from one location to another are cumbersome and time consuming. Under the old rules, an applicant wishing to move a channel to a new location would first have to file a petition for rulemaking which would be subject to public notice and comment. If the petition was granted, the party who had identified the opportunity would be accorded no licensing preference when applications were actually accepted. This process necessarily discouraged innovation. The proposed changes would enable an applicant who identifies an area where an air-ground channel can be "dropped in" to pursue the proposal immediately without going through a formal reallocation process.

31. The revised rules also better accommodate changes in air-ground technology and in the industry structure. Technology now permits the sharing of the common signalling channel so that additional licenses can be granted without

^{17/} See Comments filed with respect to reassignment of air-ground channel 454.825 MHz from Newark, New Jersey to Laurel Run, Pennsylvania, In Re Amendment of Section 22.521(b) to Amend the Table of Assignments for Air-Ground Stations in the Public Mobile Services, CC Docket 91-121, RM-6792.

interference.^{18/} This has encouraged new entrants to the air-ground business. As more providers of service have emerged, a greater need has been created for adding flexibility to the channel assignment process.

32. On balance, the Commenters have concluded that the proposed changes will benefit the industry and the user public by creating a more flexible, comprehensive and competitive air-ground service in the 450 MHz band. However, air-ground applications filed prior to the release of the Commission's proposed rules should continue to be processed so as not to allow the industry to come to a standstill while the new rules are under consideration.

H. Notification Requirement

33. The Commission proposes to accord licensees 15 days after service to the public commences to mail the notification to the Commission. This proposal alters the current requirement that service cannot commence until the notification is submitted.

34. The Commenters welcome this change. Under the current procedure, it is very difficult to coordinate the

^{18/} See, e.g., PacTel Paging, Permit and License for Air-Ground Facilities, File Nos. 29287-CG-P/L-01-91; 29289-CG-P/L-01-91; 29292-CG-P/L-01-91. In fact, the revised air-ground rules should specifically indicate that the Commission has found it to be technically feasible to share the signalling channel in common areas, and to put a specific provision in the rules requiring air-ground carriers to cooperate to facilitate interference-free use of this shared channel.

construction and the filing of the FCC Form 489 so that the commencement of service dates and the filing dates coincide perfectly. It is much preferred for licensees to be able to complete construction, and then submit the necessary notification within a reasonable time.

35. The Commenters do, however, suggest a change in language. Rather than requiring that the notification be "mailed" within 15 days, the requirement should be that the notification be received at the FCC within 30 days. In most instances, the Commenters do not mail their notifications to the Commission. Rather, they transmit them to Washington counsel for hand-delivery to the Commission. It is unclear whether this procedure meets the letter of the new rule. Setting a deadline for the notification to be received at the Commission will enable licensees to select a variety of alternate means of transmitting the necessary notification to the Commission.

I. Other Noteworthy Proposals

36. The foregoing list of rule changes supported by the Commenters is not all-inclusive. As is evident from comments being made elsewhere in this submission, there are other aspects of the Notice that the Commenters support. For example, although the Commenters suggest some modifications or editorial revisions to the following proposed changes, they do enjoy the Commenters' general support:

(a) the reorganization of Part 22 to provide greater logical consistency;

(b) the increased reliance by the Commission upon the self-certification of engineering proposals in order to expedite application processing;

(c) the encouragement of settlement conferences to resolve licensing disputes;

(d) the relaxation of the rules governing the use of mobile channels for control purposes;

(e) the adoption of procedures to discourage sequential, repetitive filings to keep alive permits for unconstructed stations; and

(f) the movement toward the submission of magnetic disks as an alternative to microfiche filings.

37. However, as is indicated in various discussion sections below, these laudable aspects of the Commission's proposal need to be revised or refined in order to be fully effective.

38. In sum, the Commenters are of the view that the proposed rule changes contain a number of significant beneficial proposals deserving of implementation. The Commenters urge the Commission to proceed with deliberate speed to complete and implement these changes, while paying due consideration to the comments in the following sections which identify areas where the Commission should reconsider, revise or amend its approach.

**III. A FEW OF THE PROPOSED CHANGES WOULD
 HAVE UNINTENDED AND UNFORTUNATE CONSEQUENCES**

39. In a few instances, the Commission is proposing rule changes that would have a serious detrimental effect upon the radio common carrier industry. The Commenters urge the Commission to reconsider these proposals in order to avoid unintended and unfortunate consequences from the rule changes.

**A. First Come, First Served
 Application Processing**

40. In an apparent effort to reduce mutually-exclusive application conflicts, the Commission proposes to substitute a first come, first served application processing procedure for the current 60 day cut-off procedure. Only applications received on the same day would be considered mutually-exclusive and subject to the Commission's lottery procedures under the proposed rules.

41. The Commenters strenuously object to this significant change. In both the paging and radio telephone services, the market has been increasingly demanding wide-area services in which communications can be received over a large geographic area on a common channel. The Commenters are very concerned that their ability to meet such needs will be frustrated if the proposed rule changes are adopted.

42. The Commission must recognize that competitors frequently have advance knowledge of the intention of a carrier to expand service. There are a limited number of suitable